"Quo Warranto": Only in California—Challenging Early Chiropractic Law

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In California from 1907-1925 two writs of *quo warranto* were filed against the first two chiropractic boards. Thirteen of the fifty original medical practice acts and at least eleven original chiropractic acts contained an eligibility requirement for first appointed board members, a stipulated pre-practice period. Twenty-three of these combined boards suffered no legal challenges by practicing colleagues, the attorney general or the courts, for what appeared to be unlicensed practice. Only in California were the first two boards so challenged. In California, there were other unique forces at work that no chiropractor suspected would prematurely expunge the first appointed board. These legal quagmires delayed the systematic licensing for many months. Only in California did this unique history take place.

This study is based upon the legal question of a pre-practice requirement written into many medical and some chiropractic original practice acts, as an eligibility requirement for first appointed state board members and to see what consequences, if any, arose from this criterion.

Table I lists thirteen states where the pre-practice requirement was written into the original medical practice acts. Table II itemizes eleven known states whose original chiropractic acts also require the pre-practice criterion.

The actual first evidence of a chiropractic legislative bill that was introduced into the legislature containing the pre-practice requirement, contrary to Dr. Carver (OK; Carver p. 73), was in California on February 21, 1907. (CA 1. a) The 'mixer' group had prevailed upon Senator Rambo of Boulder Creek, to introduce their concept for an independent Chiropractic act, that contained a one year pre-practice criterion.

The bill was short lived after introduction, only to 'die' in committee. (Ibid) On January 6, 1908, Dr. Willard Carver, by request, had his version of an independent chiropractic act introduced into the first session of the Oklahoma legislature. It too contained a one year pre-practice requirement and met the same fate as California's bill, it too 'died' in committee. (Carver, p. 73; Oklahoma)

In 1909 the same 'mixer' group in California returned to the legislature, this time prevailing upon Assemblyman Pulcifer of Oakland to introduce their re-written version of their 1907 bill. Like the 1907 session, the Pulcifer bill again, 'died' in committee, the legislature had not been convinced that chiropractic was ready for state regulation. (CA 1, b) The following biennial session, the 'chiros' were not upon the legislative scene, they were trying to figure out how to be successful at the Capitol. During this period 1910-1911 more 'chiros' were being educated within and more came from outside and were practicing within.

Among the out-of-state ones was Dr. Tullius F. Ratledge from Oklahoma, who established his fourth "System School" in Los Angeles in 1911. (Smallie, 47) In no time, Dr. Ratledge became the spokesman for the 'straight' group and became their self-appointed legislative leader for the 1913 session. Dr. Ratledge had boasted of legislative experience with Dr. Willard Carver in Oklahoma and he claimed experience in Kansas also. (Smallie, p. 6)

In January 1913, at his own expense, Dr. Ratledge went to Sacramento to meet with as many state legislators as he could, to tell them of his version of what chiropractic was all about, and to see if he could get a member to introduce his bill. Senator Gates of Los Angeles introduced the Ratledge bill containing a one year pre-practice requirement, only to have the bill 'die' in committee. (CA 1,d)

Ratledge was undaunted, persevering the next two biennial sessions, finding an author among the legislators, but always to suffer the same repeated fate, his bills would 'die' in committee, each bill containing the pre-practice requirement. (CA 1,e,f) In 1914, Dr. Ratledge suffered arrest, was convicted but appealed on the basis he was not practicing medicine without a license. In 1916 he lost his appeal and suffered a three month jail sentence. (Smallie, p. 47)

Dr. Charles Cale, owner of another chartered (1911) school, the Los Angeles College of Chiropractic and the president of the California Chiropractic Society (the 'mixer'

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group) was on the legislative scene with Dr. Ratledge. Each 'pitched' a different version of what chiropractic was all about, each contained the pre-practice criterion in the 1919 session. (Turner p. 133) Assemblyman Baker of Los Angeles for Dr. Cale, Assemblyman Morrison of San Francisco for Dr. Ratledge, both bills 'died' in their committees. The chiropractic 'jinx' was alive and well. (CA 1, g)

The remainder of 1919 and early 1920 found the Cale forces busy trying to qualify a ballot initiative proposition for the 1920 General Election Ballot that would create an autonomous chiropractic board of examiners. Dr. Ratledge engaged Dr. B. J. Palmer to instruct his graduates in the state to vote no on Proposition 5 that made the ballot. He also enlisted the medical forces to assist, which they gladly did. Proposition 5 was defeated by only 10,000 votes. (CA 4, a)

In the 1921 session, Dr. Ratledge returned to Sacramento, rather triumphant over his rival 'chiros,' thinking the medical forces would be more receptive to his version of the bill. Assemblyman Benton of Los Angeles introduced the Ratledge bill, this time with a three year pre-practice statement. The medical forces defeated the bill yet again! (CA 1,h)

This series of defeats jolted Dr. Ratledge and all others, a new and different way had to be found if they were to be successful. All sides agreed to qualify another initiative for the November 1922 ballot, each side compromising on content. Unified, they created the state-wide Campaign Committee which then created the Chiropractic Defenders League from friends and patients. These joint efforts produced more than enough signatures to qualify Proposition 16 to the ballot. (Methven; Turner p. 133) Section 1 of this act contained now a three year pre-practice requirement for first appointed board members. The second board would only require being a licentiate. (CA 4,b)

Proposition 16 passed by over 150,000 votes, the governor declared it law December 1, 1922. (Ibid) All chiropractors were jubilant after fifteen years of legislative struggle. (BCE 3)

Kansas in 1913 and Arkansas in 1915 became the first states to enact effective chiropractic laws. Oklahoma passed its law in 1921 (Table 11). All of these states' first appointed boards met to organize, elect officers, examine applicants and issue licenses unimpeded by the courts from carrying out their authority. Their pre-practice was not considered as unlawful. There is no evidence of any legal challenges to the medical boards either. (BCE 6; Wilder)

California was unique during the period 1909-1923, in that the medical practice act licensed osteopaths as drugless practitioners (DP's). In 1911, this category was amended to include—"those other systems or modes of treating the sick or afflicted." (CA 3b) To this expanded group of healers, some ninety-one chiropractors who had taken practical courses in birthing and gynecology, passed the medical boards examinations and became certified as drugless practitioners. (Turner p. 127, 141) To say the least, Dr. Ratledge was very outspoken over these 'chiropractic-traitors,' declaring them not to be chiropractors and that all chiropractors should refrain from fraternizing in any way with this aberrant group. (Turner p. 127; Smallie p. 12)

The year 1922 was one of intra-professional peace and cooperation prior to December, when suddenly and violently this peace was shattered, as DP's, 'mixers' and 'straights' tried to access the governor with rosters of their people they felt most qualified to be board members. (Methven)

Governor Friend W. Richardson on February 10, 1923 publicly announced his selection for the first chiropractic board. He also published his remarks that "the legal profession would have a field-day suing one chiropractor by another, for what was expressed to me." (Turner p. 139) The first appointees were James Compton of Oakland, J.B. Edgerton of Banning, Ray S. LaBarre of San Francisco, W. A. Messic, and Albin Peterson from Los Angeles. The first board met in Sacramento, February 27-28, 1923 to organize, elect officers and to determine how they would qualify and examine some 1700 practicing chiropractors in the state. (BCE 1, 3) Said the board:

> The first motion passed was to set categories for all applicants—1) those arrested and jailed, 2) those who served on the campaign committee, 3) those who under Section 8 of the act who had practiced in the state for the required two years and qualified by education, and 4) those who graduated after January 1923. Reciprocity would be considered after these four categories had been completed. (BCE 1)

Also on February 27, 1923 in San Francisco, George A. Gillespie, a chiropractor and a D.P., petitioned the attorney general to bring legal action against the first appointed board. (CA 5; Turner p. 141) Gillespie citing those appointed had not met the legal pre-practice requirement, but he had. (BCE 1; CA 5)

Gillespie's case hit all of the states' newspapers, including the *Sacramento Bee*'s morning edition on February 28th. While breakfasting, the board read of this pending legal action. They abruptly walked over to the Capitol to a secured room, paid their $25 each to Secretary Compton, then one of them typed the first five licenses, each signing

all licenses in accordance with Section 8a of the act. (BCE 1; Turner p. 141) The board then established an application form, an examination schedule, assigned examination subjects for questions by each member. (BCE 1)

Weeks later, after qualifying numerous applicants from Southern California, an examination was given April 21-23 in Los Angeles, where 108 passed; April 28-30 in Oakland where 135, and on May 4-6 in San Francisco only four passed. (Ibid) During the later examination, each board member was served a writ of *quo warranto*, announcing a trial date for June 4, 1923 in a superior court in San Francisco, Judge Walter P. Johnson presiding. (BCE 1; CA 5) A writ of *quo warranto* is a written order of the court designed to test whether a person exercising power is legally entitled to do so. (Black's p. 1256)

Each board member appeared in court as ordered with attorneys for the board. All parties waived a jury, thus the case to be decided by Judge Johnson. Each board member testified they had practiced in the state for at least three years or more, as specified in Section 1. of the act. Under cross examination, each member admitted their pre-practice had been as unlicensed chiropractors. (BCE 1; CA 5) Following court, the members walked to president La Barre's office on Geary street, to sign and mail 247 licenses, to those who had been successful in their examinations given in April and May of 1923. (BCE 1, 4, 5).

Judge Johnson on July 16, 1923 issued his first decree, a restraining order upon each board member, disallowing any further examining of applicants and no more issuing of licenses until further notice of the court. (BCE 1; CA 5) On September 17th the Judge announced his second decree, that each appointed board member had not met the legal requirement of Section 1. of the act, i.e. pre-practice, which the court defined as unlicensed and illegal. The board en masse, rebutted the decision and filed for an appeal on September 23rd. The state appellate court on December 9th handed down their decision, supporting the decision of the trial court. Again, the board filed an appeal to the state supreme court on December 26th. The high court on March 18, 1924 rendered its decision, supporting the trial court's decision, expunging this first appointed board in toto, after only thirteen months in office. In spite of the legal decisions, this first board did manage licensing 247 chiropractors into legal practice! (Ibid)

As written, Section 1. of the act was more lenient for those appointed to the second board, they only had to be licentiates. (BCE 1, 2) Not to be singed a second time, Gov. Richardson took his time reviewing old and new submitted names. On July 19, 1924, he surprised all chiropractors when he reappointed Dr. James Compton to the board. The new appointees were John K. Gilkerson of Glendale, Henry Duncan McFarland of Los Angeles and William Tate of Berkeley. The fifth member was unnamed. This short-board met in Los Angeles the next day, electing Dr. Gilkerson president and Dr. Compton secretary. Unanimously they pledged to continue policies of the first board in the four categories of applicants. (BCE 1)

Again in San Francisco on August 28, 1924 from a different superior court and judge, a second writ of *quo warranto* was issued to the second board by Dr. Joseph A. Sanford, a director of the Western College of Chiropractic in San Francisco. (BCE 1; Turner p. 148; CA 2) Based solely on the charges, this judge issued a restraining order to the board, prohibiting examinations of applicants until further notice! (BCE 1) It would not be until September 13th when the board next met in San Francisco. When they did meet, three local chiropractors filed a joint complaint against Dr. Sanford, challenging his pending application before the board with lack of education as required by the act. Dr. Sanford not being present, this matter would have to wait until January 12, 1925, when the board next met in San Francisco.

At this meeting Dr. Sanford rebutted charges against him and submitted a roster of over 700 names of pending applicants who he felt were wanting in the educational requirements of Section 8 of the act. (BCE 1) Since the board was unable to function by examining applicants, it had plenty of time to investigate charges. At a subsequent board meeting, it was announced that Dr. Sanford's application was turned down because he had filed under the false and fictitious name of Jonas Suffinsky. The board also forbade his ever filing another application. (Ibid) Sanford thus cut his own throat. As for the roster of hundreds of names he submitted as deficient in education, the board could find only a few. (Ibid)

In the meantime, the board petitioned the attorney general's office for assistance regarding this second writ of *quo warranto* seeking a modification of the injunction, to allow the board to examine applicants found qualified in all respects and issue licenses, if the board submitted all applicants' names with grades to the AG's office prior to issuing licenses. The board was granted this request, thus allowing further hundreds of applicants who had previously taken and passed their exams to be licensed. On April 1, 1925, Dr. Jesse F. Methven was licensed, after passing his board exam July 19, 1924; Dr. Tullius F. Ratledge was licensed April 28, 1925. (Methven; BCE1)

As if these two *quo warranto* cases were not enough, three more legal challenges were filed against the second board between September 15, 1923-February 20, 1925, culminating in a final decision on April 6, 1925; Result— A general intervention by the San Francisco superior court

assisted by the attorney general, in taking over all together the jurisdiction of applicant qualification, scheduling of examinations, thus retarding licensure. (Ibid)

The intense intra-professional duality continued until recently, as board appointments had a bearing on scope of practice. Since the advent of the Council on Chiropractic Education with its accreditation commission the 'philosophical' duality has sharply lessened.

And in conclusion, in reviewing the state Supreme Court decision in People v. La Barre, 193 Cal. 388-1924, the result of the first *quo warranto* writ, the following is noted:

> The courts judged this case upon 1) statute construction of the act, 2) eligibility requirements of this act as compared with the other state health care acts at that time, 3) the elements of lawfulness of the pre-practice, 4) the legal meaning of 'actual practice,' and finally 5) the fundamental principle with the law, "that a right cannot be founded upon a wrong."

The courts also studied other *quo warranto* cases within the state and outside of, dealing with the learned health professions. The state supreme court felt that the chiropractic act to be flawed in construction by this pre-practice requirement on the first board. Also, while this first board being immune from competency testing while all other applicants were not, was inconsistent with the law. Finally, the high court held, "the definition of 'actual practice' was open to but one interpretation, legal and lawful practice." That contrary views as held by the appellant board members was contrary to every rule of interpretation or construction of the law. (CA 5)

Review of the original medical practice act of 1876 gave example that this first board was immune to competency testing, as were the applicants; a diploma was the only criteria for licensure. (CA 3) The 1907 amendments to the medical act included two osteopathic members to the board, who were also immune from any competency testing to receive their licenses. Now in 1923-1925, the first chiropractic board members were being judged by an obvious 'double-standard..' It is also noted in the 1922 initiative osteopathic act, Proposition 20 on the same November ballot as the chiropractors, the first appointed osteopathic board had a pre-practice requirement as physicians-surgeons of five years, while the preceding five years they were only licensed as drugless practitioners, and no competency testing of this board was set forth in their act.

As indicated in Table II, other states who mandated a pre-practice period prior to their law, also had no competency testing for the first appointed board members. Also in all of these states, while their legislation was pending in the process, no attorney general, legislative bureau or colleague ever challenged the legislation or first appointed boards. Only in California did this take place.

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TABLE I
MEDICAL PRACTICE ACTS REQUIRING PRE-PRACTICE FOR FIRST BOARD MEMBERS

1876	* California	At time of enactment
1881	* Arkansas	5 years
	* Nebraska	3 years
1886	Iowa	5 years
1889	* Montana	2 years
	Oklahoma Terr.	5 years
1893	New York	5 years
	Pennsylvania	10 years
1894	Massachusetts	10 years
1895	Maine	5 years
	Oregon	5 years + 7 years res.
	Rhode Island	3 years
	West Virginia	12 years
1908	* Oklahoma	3 years

All other states first Practice Acts imply pre-practice.

* States with Chiropractic Acts also containing the pre-practice requirement. (Jackson)

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TABLE II
CHIROPRACTIC PRACTICE ACTS REQUIRING PRE-PRACTICE FOR FIRST BOARD MEMBERS

1915	* Arkansas	1 year
	North Dakota	2 years
1919	Vermont	1 year
1921	Arizona	3 years
	* Montana	1 years
	Oklahoma	5 years
1922	California	3 years
1923	Nevada	Prior to enactment
1925	* Nebraska	2 years
1928	Missouri	2 years
1974	Louisiana	5 years

* Common states where Medical Practice Acts preceded with pre-practice requirement and may have been model for early Chiropractic Acts

Created from 1990 survey by author of all original Chiropractic Acts.